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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 09-004

#### Comments

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

#### **2. Form, Style and Placement in Administrative Code**

a. In s. Ins 17.28 (3) (c) (intro.), “insurance services offices, inc.” and in s. Ins 17.28 (6) (d), “medical college of Wisconsin, inc.” may be capitalized. [See s. 1.01 (4), Manual.]

b. In s. Ins 17.28 (3) (c) 2., the new entries “Employed Physician or Surgeon 80177” and “Employed Physician or Surgeon (D.O.) 84177” should be inserted so that the list remains in alphabetical order.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The paragraph at the beginning of the proposed order indicates that the proposed rule would amend s. Ins 17.01 (3). However, the rule also would amend s. Ins 17.28 (3) (c). This should be added to the paragraph.

b. In addition, the relating clause in that paragraph indicates that the proposed order relates to the “patients compensation fund.” As correctly noted elsewhere in the proposed order, the fund has been renamed the “injured patients and families compensation fund.” The current name should be used in the relating clause.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In Item 9. of the analysis, “an affect” should be changed to “an effect.” Also, the semicolon in the first sentence should be changed to a comma.

b. Section Ins 17.28 (3) (c) 1. refers to “Shock Therapy,” “Shock Therapy (D.O.),” and “Shock Therapy-insured” under Class 1. Is the meaning of “insured” clear? Should the other two entries refer to “uninsured,” in order to distinguish between the terms?

Also, s. Ins 17.28 (3) (c) 3. adds two entries for “Shock Therapy” to Class 3, based on whether the provider is an “employed physician.” Should s. Ins 17.28 (3) (c) 1. make clear that it refers only to instances when the physician is not an “employed physician”?

c. In s. Ins 17.28 (3) (c) 2., the new entries “Employed Physician or Surgeon 80177” and “Employed Physician or Surgeon (D.O.) 84177” in Class 2 are unclear for three reasons.

First, it appears that physicians or surgeons, employed or otherwise, could be involved in any of the specialties or types of practices listed in Classes 1 to 4. Do these new entries in s. Ins 17.28 (3) (c) 2. mean, for example, that an employed surgeon whose specialty is “OB/GYN” would be in Class 2, rather than Class 4?

Second, s. Ins 17.28 (3) (c) 3. separately refers to an “employed physician” under the “Radiation Therapy” and “Shock Therapy” entries. This suggests that they are then put into Class 3, rather than Class 2. However, this is unclear.

Third, s. Ins 17.28 (6) (k) 1., (L) 1., (m) 1., and (q) 1. all refer to the total numbers of “employed physicians.” In contrast to s. Ins 17.28 (3) (c) 2., reference to an employed surgeon is omitted (although a surgeon is licensed as a physician).

d. In s. Ins 17.28 (3) (c) 2., the new entry “Myelography-Discogram-Pneumoencephalo (D.O.)” is not parallel to the existing entry “Myelography-Discogram,” which does not refer to “Pneumoencephalo.” Was the difference intentional?

e. Section Ins 17.28 (6) (k) 1., (L) 1., (m) 1., and (q) 1. all refer to specified total numbers of certain persons, for example, “shareholders and employed physicians and nurse anesthetists” or “employed physicians and nurse anesthetists.” In contrast to other provisions in the proposed order, it is not clear at what point in time the determination of the number of these persons is made for the purpose of determining which category an entity falls into for the purpose of determining the appropriate fee.

f. In s. Ins 17.28 (6) (k) 2., (L) 2., (m) 2., and (q) 2., the introductory language refers to “health care professionals,” while the accompanying table in each provision refers to “health care persons.” Unless a difference is intended, one phrase should be selected and used consistently to avoid ambiguity.

g. Section Ins 17.28 (6) (q) appears to be a catch-all category that applies to an organization that is not specified as a partnership or corporation. Thus, it would not apply to partnerships covered by sub. (6) (k); ch. 180 corporations covered by sub. (6) (L); or ch. 181 corporations covered by sub. (6) (m).

However, an operational cooperative sickness care plan covered by sub. (6) (n) does not appear to be exempted under s. Ins 17.28 (6) (q). Should s. Ins 17.28 (6) (q) (intro.) indicate that it refers to an organization or enterprise not specified as a partnership, corporation, or operational cooperative sickness care plan?